

COMMENT SET 5: UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), NATIONAL MARINE FISHERIES SERVICE, RODNEY MCINNIS, REGIONAL ADMINISTRATOR



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

In response, refer to:
150308SWR2008PR0015:MLD

JAN 16 2009

Scott McFarlin
Project Manager
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825

Dear Mr. McFarlin:

NOAA's National Marine Fisheries Service (NMFS) has reviewed the Draft Environmental Impact Report (DEIR) for the AT&T Asia America Gateway Fiber Optic Cable Project, from Hawaii to California, as part of a larger cable system originating in Asia. NMFS offers the following comments pursuant to the Marine Mammal Protection Act (MMPA).

Proposed Project

The proposed fiber optic cable would land at AT&T's existing landing facility at Montaña de Oro State Park near Morro Bay, California. The cable would be connected to the AT&T cable station located near San Luis Obispo via an existing terrestrial cable conduit system. The marine cable would be installed using a combination of plowing and direct bottom lay along a pre-determined course. The proposed cable would provide a link between the west coast of the United States, Guam, Hawaii, and Southeast Asia. The basic objectives for the project are to complete Segment 5 of the Asia America Gateway (AAG) Fiber Optic Cable System by installing one submarine fiber optic cable on the continental shelf off Morro Bay, California, and bringing it ashore through an existing conduit extending from a manhole in the Sandspit Beach parking lot in Montaña de Oro State Park.

AT&T has operated cable landings in the Montaña de Oro State Park since the 1960's. In 1990, four directional conduits were installed on the ocean floor and a beach manhole was set in a parking lot located within the Montaña de Oro State Park. At that time, the HAW 5 cable was installed into one of the conduits. Additionally, AT&T installed an overland conduit system into two cables from the beach manhole to the terminal building, located 10.5 miles inland, near the City of San Luis Obispo. One unused conduit within the existing conduit system is available for the AAG submarine fiber optic cable and two unused onshore conduits are available for the terrestrial fiber optic and power cables. Installation of the shore-end and marine segments is expected to be initiated in the second quarter of 2009.



Marine Mammal Protection Act (MMPA) Comments

As described on page 4.3-51 of the DEIR, the following marine mammal species may be in the area at the time the proposed project is scheduled to occur: Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), bottlenose dolphins (*Tursiops truncatus*), long-beaked common dolphins (*Delphinus capensis*), short-beaked common dolphins (*Delphinus delphis*), humpback whales (*Megaptera novaeangliae*), and gray whales (*Eschrichtius robustus*). Marine mammals may be impacted by this project, as described on page 4.2-122 MARBIO-4, from possible collisions with project-related vessels, entanglement with the cable, or by noise, as described on page 4.10-7 IMPACT NOI-1.

Whales, dolphins, porpoises, seals, and sea lions are protected under the MMPA. See 16 U.S.C. § 1361 *et seq.* Under the MMPA, it is generally illegal to "take" a marine mammal without prior authorization from NMFS. "Take" is defined as harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture, or kill any marine mammal. Except with respect to military readiness activities and certain scientific research conducted by, or on behalf of, the Federal government, "harassment" is defined as any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal in the wild, or has the potential to disturb a marine mammal in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Support vessels may be traveling at 10-15 knots and could impact gray whales migrating through the area, particularly if the project is conducted during the northbound migration (anticipated offshore construction starting in April to June 2009), which could cause separation of or a collision with, cow-calf pairs. It is anticipated that the cable-laying vessel will move at slower speeds than those anticipated for support vessels, but will have limited maneuverability and thus could collide with marine mammals in the area. The mitigation measures described in MARBIO-4, including the development of a Marine Wildlife Contingency Plan, proposes NMFS-approved observers on all vessels during marine construction activities within 50 miles from shore. During a telephone call on December 19, 2008, between Ray deWit and Jennifer Klaib from Padre Associates, Inc., and Monica DeAngelis, of my staff, modifications to MARBIO-4 were discussed. Padre Associate, Inc. suggested modifying the mitigation measure to concentrate marine mammal observers on those vessels that could cause an impact to marine mammals, rather than having only one observer on all vessels, specifically on the cable-laying vessel and support vessels (those transporting crew back and forth from shore). NMFS supports this revision to the mitigation measure and looks forward to working with the applicant during the review period of the Marine Wildlife Contingency Plan. NMFS would also like to remind the applicant that in the unlikely event of a collision with a marine mammal, NMFS Southwest Regional Office's Stranding Coordinator, Mr. Joseph Cordaro should be immediately notified at 562-980-4013. The phone notification should be followed-up with a written report with 14 days of the incident.

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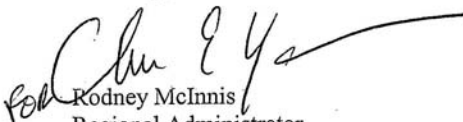
Sounds introduced into the sea by man-made devices could have a deleterious effect on marine mammals by causing stress or injury, interfering with communication and predator/prey detection, and changing behavior. Acoustic exposure to loud sounds, may result in a temporary or permanent loss of hearing (termed a temporary (TTS) or permanent (PTS) threshold shift) depending upon the location of the marine mammal in relation to the source of the sound. NMFS is currently in the process of determining safety criteria (*i.e.*, guidelines) for marine species exposed to underwater sound. However, pending adoption of these guidelines we have preliminarily determined, based on past projects, consultations with experts, and published studies, that 180 dB re 1 μ Pa_{RMS} (190 dB re 1 μ Pa_{RMS} for pinnipeds) is the impulse sound pressure level that can be received by marine mammals without injury. Marine mammals have shown behavioral changes when exposed to impulse sound pressure levels of 160 dB re 1 μ Pa_{RMS}.

As described in IMPACT NOI-1, vessel specific noise measurements are not available, but it is expected that the maximum noise output from vessels may be at or near NMFS harassment levels within a short distance of vessel (1,000 feet or less). In addition, it is expected that when the time comes for removal of the cable that action would produce the same noise levels anticipated for the placement of the cable. It is not clear whether impacts from noise will be minimized via the mitigation measures to be described in the Marine Wildlife Contingency Plan, as that document was not available for review. Thus, based on the information provided, it may be necessary to receive authorization from NMFS under the MMPA for this proposed project. Most incidental take authorizations to date have involved the incidental harassment of marine mammals by noise. NMFS may re-evaluate this recommendation once we have reviewed the Marine Wildlife Contingency Plan.

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Thank you for coordinating with NMFS regarding this project. We appreciate your efforts to comply with Federal regulations and to conserve and protect marine mammals. Please contact Monica DeAngelis at 562-980-3232 or Monica.DeAngelis@noaa.gov if you have any questions concerning this letter or if you require additional information.

Sincerely,


Rodney McInnis
Regional Administrator

**RESPONSE TO COMMENT SET 5: UNITED STATES DEPARTMENT OF
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(NOAA), NATIONAL MARINE FISHERIES SERVICE, RODNEY MCINNIS, REGIONAL
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5-1 The requirement for a Marine Wildlife Contingency Plan (Plan) is acknowledged and it is understood that the Plan will require the approval of NOAA Fisheries. Consistent with the results of the discussions with NOAA Fisheries on marine observer requirements, revisions have been made to Mitigation Measure MARBIO-4. See Section 4.0, Revised Pages of the DEIR text revision for the Biological Resources Section, page 4.3-123.

5-2 It is acknowledged that there are no known data on the underwater noise that could be generated by the project vessels; however the DEIR does provide data on documented noise levels generated by vessels similar to those expected for this project. Revisions to Mitigation Measure NOI-1, to include the specification of the size of the “safety zone” area around the project vessels during operations, are provided below. These recommended revisions, in addition to those recommended in the revised Mitigation Measure MARBIO-4, should be incorporated into the Marine Wildlife Contingency Plan (Plan). It is further recommended that as soon as the project vessels and schedule are known, AT&T should contact NOAA Fisheries to discuss the possible need for an incidental take permit and the specific content of the Plan. See Section 4.0, Revised Pages of the DEIR text revision for the Noise Section, page 4.10-8.